

N.D.A.G. Letter to Meier (Oct. 8, 1986)

October 8, 1986

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, ND 58505

Dear Secretary Meier:

Thank you for your letter of September 18, 1986, regarding whether a domestic business corporation may be merged into a domestic professional corporation.

Business and professional corporations are governed by the provisions of N.D.C.C. Chs. 10-19.1 and 10-31, respectively. These provisions of law provide, in pertinent part, as follows:

10-19.1-96. MERGER -- EXCHANGE -- TRANSFER.

1. Any two or more corporations may merge, resulting in a single corporation, with or without a business purpose, pursuant to a plan of merger approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.

* * *

(Emphasis supplied.)

10-31-03. APPLICABILITY OF BUSINESS CORPORATION ACT.
The Business Corporation Act shall be applicable to professional corporations and they shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other corporations except where inconsistent with the letter and purpose of this chapter. This chapter shall take precedence in the event of any conflict with the provisions of the Business Corporation Act.

(Emphasis supplied.)

Corporate mergers are commonly defined as the union of two or more corporations by the transfer of property to one of them (which continues in existence); the others being merged therein. See Black's Law Dictionary, 1140 (Rev. 4th Ed. 1968).

Since the merger of a professional corporation is not addressed in N.D.C.C. Ch. 10-31, it is governed by the business corporation merger provisions of N.D.C.C. §§10-19.1-96

through 10-19.1-102. Clearly, as N.D.C.C. §10-19.1-96 provides, any two corporations may merge.

Therefore, it is my opinion that a domestic business corporation may merge into a domestic professional corporation with the professional corporation emerging as the surviving corporation. Obviously, the surviving professional corporation would have to conform to the professional corporation requirements of N.D.C.C. Ch. 10-31.

Sincerely,

Nicholas J. Spaeth

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